

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:	)	
	)	
BRUCE S. SMITH,	)	No. 05 B 40196
	)	
Debtor.	)	
-----	)	
TRINA TIDWELL,	)	
	)	No. 07 A 00011
Plaintiff,	)	
	)	
vs.	)	
	)	
BRUCE S. SMITH,	)	
	)	
Defendant.	)	
-----	)	
SANDRA STERLING-AHLLA,	)	
	)	No. 07 A 00012
Plaintiff,	)	
	)	
vs.	)	
	)	
BRUCE S. SMITH,	)	Chicago, Illinois
	)	September 17, 2007
Defendant.	)	1:30 p.m.

TRANSCRIPT OF PROCEEDINGS BEFORE THE  
HONORABLE JACK B. SCHMETTERER

APPEARANCES:

MR. DARRYL ROBINSON  
on behalf of Trina Tidwell and Sandra  
Sterling-Ahalla;

MR. STEVEN H. JESSER  
on behalf of Bruce S. Smith.

I N D E X

<u>WITNESS:</u>	<u>DX</u>	<u>CX</u>	<u>REDX</u>	<u>RECX</u>
CHYKOLA JONES	15			
NATHANIEL SINN	25	36	39	
BRUCE SMITH	41	64	65	

1 THE CLERK: Smith, 05 40196, with related  
2 adversaries, Tidwell versus Smith, 07 A 11,  
3 Sterling-Ahlla versus Smith, 07 A 12.

4 MR. ROBINSON: Good afternoon, Your  
5 Honor. Darryl Robinson for Trina Tidwell and Sandra  
6 Ahalla-Sterling.

7 THE COURT: Good afternoon, folks. I  
8 read your opening statements contained within your  
9 proposed findings of fact and conclusions of law. I  
10 assume you plan to offer the evidence that you  
11 mention in there. Does the plaintiff want to take  
12 five minutes to add to that?

13 MR. ROBINSON: Yes, Judge.

14 THE COURT: Go ahead.

15 MR. ROBINSON: Yes, Judge. On  
16 December -- approximately on December 18th, 2003,  
17 Judge, Trina Tidwell and Sandra Sterling-Ahalla  
18 filed --

19 THE COURT: Use the microphone. Speak a  
20 little --

21 MR. ROBINSON: Trina Tidwell and Sandra  
22 Ahalla-Sterling filed a complaint in the Circuit  
23 Court of Cook County, Judge, against Bruce Smith on  
24 two counts. One was sexual assault, and two was  
25 respondent superior against Kennedy Medical Center.

1 THE COURT: Is this Sandra Sterling here?

2 MR. ROBINSON: No, they're not, Judge.

3 THE COURT: No. Is Trina Tidwell here?

4 MR. ROBINSON: No, they're not, Judge.

5 THE COURT: Okay. Go ahead.

6 MR. ROBINSON: Okay. And --

7 THE COURT: Is this your first witness?

8 MR. ROBINSON: My first witness, yes.

9 THE COURT: Go ahead.

10 MR. ROBINSON: Against Bruce Smith,  
11 Judge. The case proceeded in state court. Sometime  
12 around September of 2005, Bruce Smith filed a  
13 Chapter 7 bankruptcy petition in U.S. Bankruptcy  
14 Court in the Northern District of Illinois, and in  
15 such petition he failed to list both Trina Tidwell  
16 and Sandra Sterling-Ahalla as creditors under the  
17 schedule of creditors. That petition has been  
18 stipulated to, Judge, and should be the list of  
19 creditors as outlined by the yellow tabs outlining  
20 where the list of creditors is.

21 As a result of failing to list Trina  
22 Tidwell and Sandra Ahalla-Sterling as creditors,  
23 they did not receive notice of the bankruptcy, did  
24 not receive notice of the meeting of creditors as  
25 far as being able to file their objections.

1                   On December the 23rd, 2005, a notice  
2 of a motion to transfer the state case from  
3 bankruptcy -- from state court to bankruptcy was  
4 filed over to the Law Offices of Darryl Robinson and  
5 John F. Lyke.

6                   THE COURT: You say the plaintiffs'  
7 lawyer got notice of that?

8                   MR. ROBINSON: Yes.

9                   THE COURT: On what date?

10                  MR. ROBINSON: It was on December the  
11 23rd, 2005, Judge, one of the documents that was  
12 stipulated to.

13                  THE COURT: Go ahead.

14                         That was about 16 days before the  
15 deadline.

16                  MR. ROBINSON: Yes, Judge. Let me  
17 finish. That was the notice that was faxed over to  
18 the office. The testimony will show that, in fact,  
19 the attorney on the particular case was on vacation  
20 until after January the 1st. So although the  
21 office --

22                  THE COURT: So when did the attorney come  
23 back?

24                  MR. ROBINSON: The attorney came back on  
25 January the 3rd when he obtained knowledge of the

1 bankruptcy. So notice --

2 THE COURT: That was six days before the  
3 deadline.

4 MR. ROBINSON: Yes, it is, Judge.

5 THE COURT: Yes.

6 MR. ROBINSON: Six days before the  
7 deadline. The hearing was heard on January the 7th.

8 THE COURT: What hearing?

9 MR. ROBINSON: The hearing on  
10 transferring the case from state court to bankruptcy  
11 court.

12 THE COURT: And what happened at that?

13 MR. ROBINSON: The judge agreed,  
14 obviously, to transfer the case based upon the  
15 pending bankruptcy, although the discharge date,  
16 obviously, Judge, was --

17 THE COURT: When was there a discharge  
18 entered in that bankruptcy?

19 MR. ROBINSON: The discharge would have  
20 been entered on January the 17th, Judge.

21 THE COURT: So the attorney received  
22 notice two weeks before the discharge entered.

23 MR. ROBINSON: Yes, but had knowledge six  
24 days before, six days.

25 THE COURT: You said he received the

1 notice January 3rd.

2 MR. ROBINSON: Yes.

3 THE COURT: Discharge entered  
4 January 17th.

5 MR. ROBINSON: Oh, the 17th.

6 THE COURT: Deadline for filing something  
7 past January 9th.

8 MR. ROBINSON: Yes.

9 THE COURT: Do I have those dates right?

10 MR. ROBINSON: Yes, Judge, you have those  
11 dates right.

12 THE COURT: Go ahead.

13 MR. ROBINSON: Yes, Judge. And based on  
14 this information and factors that we've set out,  
15 we've made a -- filed an adversary complaint, both  
16 Trina Tidwell and Sandra Sterling-Ahalla, based  
17 upon, one, failure to receive proper notice. In  
18 this case we believe notice is actual knowledge, as  
19 written out in our findings and conclusions of law.  
20 And also based on fraud.

21 As this court laid out in the  
22 beginning of this adversarial proceeding, it assumes  
23 that an attorney knows what he is doing when he --

24 THE COURT: The court laid out?

25 MR. ROBINSON: Yes.

1 THE COURT: Did I enter an opinion in  
2 this case or no?

3 MR. ROBINSON: Not a written opinion,  
4 Judge. It was a verbal opinion.

5 THE COURT: Go ahead.

6 MR. ROBINSON: So that an attorney knows  
7 what he is doing when he is actually doing it,  
8 Judge, those -- Trina Tidwell and Sandra  
9 Sterling-Ahalla, along with about four or five other  
10 pending creditors and lawsuits against Bruce Smith  
11 at that time, were left off the schedule and put in  
12 the statement of financial affairs.

13 THE COURT: Did the same attorney  
14 represent Sandra Sterling-Ahalla as well as Trina  
15 Tidwell?

16 MR. ROBINSON: Yes, Judge.

17 THE COURT: Okay.

18 MR. ROBINSON: And based on that, we had  
19 a second account of fraud. That's all we wanted to  
20 add, Judge.

21 THE COURT: Thank you.

22 Counsel, do you want to take five  
23 minutes to add something to your proposed findings?

24 MR. JESSER: Yes, Judge. Thank you.  
25 Steven H. Jesser, J-e-s-s-e-r, for Dr. Bruce S.



1 Smith. Mr. Robinson is indeed the attorney who has  
2 been representing the plaintiffs throughout this  
3 process. If it weren't --

4 THE COURT: Both in state court and here  
5 you mean?

6 MR. JESSER: Yes.

7 THE COURT: In state court and here,  
8 right?

9 MR. JESSER: Yes.

10 THE COURT: Okay.

11 MR. JESSER: Your Honor has entered no  
12 written or oral opinions in the past other than the  
13 orders of the court. If it were not a fiction, I  
14 might be inclined to move for judgment on the basis  
15 of the opening statement. But there will be  
16 absolutely no testimony or evidence from either side  
17 this afternoon in the nature of fraudulent conduct  
18 by Dr. Smith or his attorney who prepared the  
19 bankruptcy petition, who is on his way over here to  
20 testify this afternoon that Dr. Smith or his  
21 attorney intended to omit these two lawsuits which  
22 were scheduled, but admittedly not in the preferred  
23 position, not in the proper place in the bankruptcy  
24 petition. I'm not going to stand before Your Honor  
25 and claim that the lawsuits, which were very well

1 described, were in the right place. They were in  
2 the statement of financial affairs.

3 THE COURT: Sir, the problem comes  
4 because if they're in the statement of financial  
5 affairs, that is not the way that they get on the  
6 distribution list for notice of the bankruptcy,  
7 which gets sent out only to people who are scheduled  
8 as creditors.

9 MR. JESSER: And --

10 THE COURT: Do you concede that they were  
11 creditors, that these two plaintiffs are creditors?

12 MR. JESSER: Yes, Your Honor, because two  
13 of the exhibits which -- if I'm speaking too loud  
14 tell me. Two of the exhibits that we submitted to  
15 Your Honor pursuant to the pre-trial order were a  
16 prior bankruptcy filing from a year before, the year  
17 2004, where indeed there can be no argument about  
18 Dr. Smith listing --

19 THE COURT: What's the explanation why it  
20 wasn't listed on the particular case that's in --  
21 that's involved here, that is the second bankruptcy  
22 filing?

23 MR. JESSER: As you'll hear in a few  
24 minutes from Mr. Sinn, who may be waiting outside to  
25 testify, when it comes time for our case in chief,

1 he was a very young attorney, first year of  
2 practice, in somewhat of a mill; there was an  
3 impending statutory change-over date; his office was  
4 extremely busy; he was handling 15 bankruptcies a  
5 day. I'm not excusing all of that, Judge. It's  
6 just background for the fact that he made a mistake.  
7 His people --

8 THE COURT: Sir --

9 MR. JESSER: -- his staff --

10 THE COURT: -- I'd like to ask you this  
11 question: Do you concede that an electronic  
12 signature of your client's signature was put on the  
13 bankruptcy filing?

14 MR. JESSER: We concede, yes. And we  
15 concede --

16 THE COURT: Because all signatures are  
17 electronic. Do you concede that his electronic  
18 signature went on the bankruptcy filing?

19 MR. JESSER: Yes. And more, Judge,  
20 Dr. Smith is an obstetrician and gynecologist  
21 professional. We don't back away from the fact that  
22 the 2005 voluntary petition is what it is. It's  
23 Dr. Smith's petition. He takes --

24 THE COURT: And since -- do you take the  
25 view that his electronic signature was affixed

1 without him reading it, reading the petition --

2 MR. JESSER: No.

3 THE COURT: -- he swore to or --

4 MR. JESSER: No.

5 THE COURT: -- not?

6 MR. JESSER: No, I didn't say that,  
7 Judge, as you'll hear in a few minutes.

8 THE COURT: Do you concede he read it  
9 before his electronic signature was affixed?

10 MR. JESSER: What I'd like to concede,  
11 Your Honor, is that he sat with his attorney,  
12 Mr. Sinn. Mr. Sinn went through it with him. And  
13 not being a legal professional, but a medical  
14 professional, he indeed signed the petition based on  
15 advice of counsel. The counsel is going to come  
16 into court in a few minutes and admit to you --

17 THE COURT: I think he's here.

18 MR. JESSER: Okay. Very well. Mr. Sinn  
19 is here. That in retrospect, the lawsuits which  
20 Mr. Robinson has prosecuted in state court were not  
21 in the preferred place in the petition.

22 What's more, I may have no questions  
23 of this very nice lady who works for Mr. Robinson  
24 because what he has said in his survey of the  
25 evidence is that on December 23 my office received a

1 fax from Johnson & Bell, which has been representing  
2 Dr. Smith in state court, to come to court in early  
3 January about a motion to mothball the case on the  
4 bankruptcy section of Judge Maddocks. It doesn't  
5 matter that Mr. Robinson was away on vacation. It  
6 doesn't matter that when I'm out of town I'm  
7 checking e-mails and voice mails 12 times a day.  
8 His office received notice that there was an  
9 '05 bankruptcy action pending on December 23, '05,  
10 which is more than three weeks before Your Honor  
11 discharged this case on January 16. Again, and I'm  
12 bucking up on my five minutes. There's no fraud  
13 here, Judge, which is the gist of the action.

14 THE COURT: Thank you.

15 All right. Case for the plaintiff.

16 MR. ROBINSON: Yes, Judge.

17 THE COURT: On Friday we went over the  
18 stipulation which, unhappily, was filed in the  
19 district court instead of the bankruptcy court. But  
20 the record is very clear that Plaintiffs' Exhibits  
21 1, 2, 3, and 4 are stipulated to.

22 MR. ROBINSON: Yes, they are, Judge.

23 THE COURT: And, therefore, they are  
24 admitted into evidence. And you may proceed with  
25 your witness.

1 MR. ROBINSON: Yes, Judge. Before I  
2 proceed with my witness, Judge, we filed an  
3 adversary complaint on two counts. On the count of  
4 fraud, we want to stand on the bankruptcy petition  
5 alone. We believe that the standard is  
6 preponderance of evidence, so --

7 THE COURT: Use that microphone and speak  
8 into it --

9 MR. ROBINSON: I'm sorry, Judge.

10 THE COURT: -- so I can hear you.

11 MR. ROBINSON: On the count of fraud, we  
12 want to stand on the bankruptcy petition alone. We  
13 believe that the standard is a preponderance of  
14 evidence. And Bruce Smith's failure to list Trina  
15 Tidwell and Sterling-Ahalla as creditors we believe  
16 is fraud per se, and that the burden of proof moves  
17 to the defendant to prove that it was not fraud. My  
18 witness is only going to testify to the issue of  
19 notice, Judge. There's two counts.

20 THE COURT: Do you have case law  
21 authority for what you just said?

22 MR. ROBINSON: Yes, Judge. It's a part  
23 of my findings of fact and conclusions.

24 THE COURT: Okay.

25 MR. ROBINSON: Thank you, Judge.

1 THE COURT: One of those citations in  
2 there?

3 MR. ROBINSON: Yes, Judge.

4 THE COURT: Okay. Thank you. Do you  
5 want to put on your witness?

6 MR. ROBINSON: Yes, I'd like to call my  
7 first witness.

8 THE COURT: Over there, ma'am, please.

9 (Witness sworn.)

10 THE CLERK: Please state your name for  
11 the record.

12 THE WITNESS: Chykola Jones.

13 THE CLERK: You may be seated.

14 THE COURT: Spell your last name, please.

15 THE WITNESS: J-o-n-e-s.

16 THE COURT: J-o what?

17 THE WITNESS: n-e-s.

18 THE COURT: And your first name?

19 THE WITNESS: Chykola, C-h-y-k-o-l-a.

20 THE COURT: Proceed, counsel.

21 CHYKOLA JONES, WITNESS, SWORN

22 DIRECT EXAMINATION

23 BY MR. ROBINSON:

24 Q Ms. Jones, what is your current  
25 occupation?

1 A I'm an office clerk.

2 Q And where is your place of employment at?

3 A 1505 East 53rd Street.

4 THE COURT: What office? Whose office is  
5 that?

6 THE WITNESS: It's a law office, Attorney  
7 Darryl Robinson and Attorney John F. Lyke.

8 BY MR. ROBINSON:

9 Q Are there any other attorneys working in  
10 that office?

11 A Yes, there are.

12 Q And what are their names?

13 A Roger Best. We also have Attorney Randy  
14 Peterson who is out on leave.

15 Q Approximately how long have you been  
16 working at that location, Ms. Jones?

17 A Approximately three years.

18 Q What are some of your primary  
19 responsibilities?

20 A I answer phones, I take messages, I file,  
21 I collect faxes, I sort mail.

22 Q You said that you collect faxes. How  
23 often would you receive faxes over at that office?

24 A I would say daily.

25 Q And what would you do with those faxes



1 after you received them?

2 A I would see who it's to the attention of,  
3 and I would put it on the respective person's desk.

4 Q Now, after you place that fax on the  
5 respective person's desk, would you call that  
6 respective person?

7 A No, I wouldn't.

8 Q Do you recall receiving --

9 MR. ROBINSON: Strike that, Judge.

10 BY MR. ROBINSON:

11 Q Are you familiar with the case of Trina  
12 Tidwell versus Bruce Smith and Sandra  
13 Ahalla-Sterling versus Bruce Smith?

14 A Yes. I know the names from the office.

15 Q Yes. Do you recall receiving a fax  
16 concerning that case on December 23rd, 2005?

17 A I can't say that I recall December of  
18 2005.

19 Q If you had received a fax on that day,  
20 what would you have done with it?

21 A I would have placed it on the respective  
22 person's desk.

23 Q And who was the lead attorney in the  
24 Trina Tidwell and Sandra Ahalla-Sterling case?

25 A Attorney Darryl Robinson.

1 Q And would you have placed that fax on  
2 Attorney Darryl Robinson's desk?

3 A Yes, I would have, sir.

4 Q Was Darryl Robinson in the office on  
5 December 23rd?

6 A I can't say that he was.

7 Q Do you know where he would have been on  
8 December 23rd?

9 A Attorney Robinson always takes vacation  
10 around that time.

11 Q Do you know when he would have returned  
12 from vacation?

13 A It would have been after the 1st of the  
14 year.

15 Q Mrs. Jones, are you an attorney?

16 A No, I'm not, sir.

17 Q Have you ever worked in a bankruptcy law  
18 firm?

19 A Not at all, sir.

20 Q If you had received that motion to  
21 transfer to bankruptcy, would you have known what it  
22 is?

23 A No, I would not have.

24 MR. ROBINSON: No further questions,  
25 Judge.

1 THE COURT: Any cross?

2 MR. JESSER: No, Your Honor.

3 THE COURT: Do you have any more  
4 questions of the witness?

5 MR. ROBINSON: No more questions, Judge.

6 THE COURT: You may step down. Thank you  
7 for your help.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 THE COURT: At this point I note from the  
11 pre-trial order that all well-pleaded facts admitted  
12 in the pleadings are admitted into evidence unless  
13 objections were filed before trial, and no such  
14 objections have been noted by us. So all of the --  
15 I will now admit into evidence all admissions in the  
16 answers to the complaint to well-pleaded facts.

17 Now, do you rest?

18 MR. ROBINSON: Yes, Judge, we rest.

19 MR. JESSER: Judge, I'd like to move for  
20 a directed finding at this time, if that's allowed  
21 in this type of proceeding, in that the evidence is  
22 that Mr. Robinson's office received not as directly  
23 as it could have been in retrospect, but notice of  
24 doctor's pending bankruptcy before Your Honor, as  
25 early as December 23, 2005, some three weeks before

1 Your Honor discharged the petition on January 17,  
2 2005. There's no even conceding arguendo  
3 Mr. Robinson cited standard of preponderance of the  
4 evidence, there's no evidence whatsoever in the  
5 plaintiffs' case in chief of any fraudulent conduct  
6 on the part of Dr. Smith or any of his attorneys,  
7 any intentional conduct to mislead Ms. Tidwell or  
8 Ms. Sterling-Ahalla or to otherwise conceal the  
9 existence of the 2005 petition for bankruptcy relief  
10 before Your Honor.

11 THE COURT: Was the signature of your  
12 client, even though it was electronic, but you  
13 conceded it was his signature even though  
14 electronic, was the -- was it -- was his schedule  
15 truthful and complete since these two cases were not  
16 placed in the schedules, they were only placed in  
17 the statement of affairs?

18 MR. JESSER: With respect to the first  
19 part of the court's inquiry, I might -- since we  
20 both admitted to you we're not bankruptcy  
21 specialists, I might like to defer that part to my  
22 examination of Mr. Sinn concerning electronic  
23 signatures, et cetera, since Mr. Robinson as late as  
24 last week was running into problems with electronic  
25 filing.

1 THE COURT: Now, wait a second. Did you  
2 just back away from your concession that we should  
3 treat the electronic signature of your client as a  
4 signature by your client?

5 MR. JESSER: No, I'm not. This is  
6 doctor's petition. I'm not acting off of --

7 THE COURT: Well, then assuming it's the  
8 same as if he signed it with a pen on a piece of  
9 paper, that's what electronic signature does, wasn't  
10 part of that schedule he filed under oath erroneous?

11 MR. JESSER: No. Your Honor --

12 THE COURT: There's a certificate --  
13 there's a -- he scheduled -- he filed a schedule --  
14 pardon me, an affidavit saying that everything on  
15 the schedules were true and complete, but the  
16 schedule of his creditors was not complete, right?

17 MR. JESSER: I think there's an  
18 explanation, Judge, as --

19 THE COURT: There may be an explanation.  
20 But, I mean, isn't that the state of things at the  
21 moment --

22 MR. JESSER: No.

23 THE COURT: -- that he did not file a  
24 complete schedule?

25 MR. JESSER: Doctor's intention in

1 signing the petition was to certify that his  
2 petition was true and complete. As it turns out,  
3 and sometimes this even befuddles attorneys such as  
4 me, the precise information that should have been on  
5 the schedule was somewhere off in another part of  
6 the petition.

7 THE COURT: I understand. Thank you. I  
8 will reserve ruling on your motion until the end of  
9 the case --

10 MR. JESSER: Thank you.

11 THE COURT: -- until all of the evidence  
12 is in. Present your evidence.

13 MR. JESSER: All right. Initially before  
14 I call Mr. Sinn, will the court receive Defendant's  
15 Exhibits 1 and 2?

16 THE COURT: Well, let's deal with that.  
17 I've got those in front of me.

18 I do believe that the defense has  
19 not objected to 3 and 4; am I right, folks?

20 MR. ROBINSON: Yes, Judge.

21 THE COURT: So 3 and 4 are admitted.

22 And you've only objected to 1 and 2,  
23 right, sir?

24 MR. ROBINSON: Yes, Judge.

25 THE COURT: Is there anything you want to

1 add to your objection?

2 MR. ROBINSON: Judge, I'm objecting to 1  
3 and 2 on the basis of, obviously, relevance and  
4 prejudice.

5 THE COURT: What do you mean prejudice?

6 MR. ROBINSON: Well, their allegation,  
7 Judge, is that, in fact, we received notice of a  
8 bankruptcy in 2004. So therefore that notice  
9 transfer of the 2005 bankruptcy, that's an issue of  
10 relevance. One bankruptcy has nothing to do with  
11 the other in terms of that. And so we believe that  
12 if the judge was to look at that notice as  
13 transferred, then that would be prejudice to my  
14 client. That's all, Judge.

15 MR. JESSER: Judge, if I've heard it  
16 once, I've heard it 50 times, "counsel, it goes to  
17 the weight. I'll allow the exhibit but then  
18 decide --"

19 THE COURT: The two exhibits are  
20 admissible. I think they're relevant.

21 MR. JESSER: Very well. Thank you.

22 THE COURT: And they are admitted.

23 Proceed with your evidence.

24 MR. JESSER: I'm going to call --

25 THE COURT: That's Exhibit -- so your

1 exhibit -- Defense Exhibit 1, 2, 3, and 4 have now  
2 been admitted.

3 MR. JESSER: All right. I'd like to call  
4 Mr. Nathaniel Sinn, S-i-n-n.

5 THE COURT: Would you go over there, sir,  
6 please.

7 (Witness sworn.)

8 THE CLERK: Please state your name for  
9 the record, please.

10 THE WITNESS: Nathaniel Sinn. Last name  
11 is spelled S-i-n-n, first name is N-a-t-h-a-n-i-e-l.

12 THE COURT: Spell that last name again,  
13 please.

14 THE WITNESS: S-i-n-n. Two Ns like  
15 Nancy.

16 THE COURT: Thank you.

17 THE WITNESS: Thank you.

18 MR. JESSER: May I examine him from here,  
19 Judge?

20 THE COURT: Yes, indeed.

21 MR. JESSER: Good afternoon, Mr. Sinn.

22 THE WITNESS: Good afternoon.

23

24

25



1 NATHANIEL SINN, WITNESS, SWORN

2 DIRECT EXAMINATION

3 BY MR. JESSER:

4 Q You have previously represented  
5 Dr. Smith?

6 A I did.

7 Q All right. I'd like to just ask you a  
8 little background about your career, might try to  
9 take the liberty of leading you just a little.

10 First, where did you attend college?

11 A University of Notre Dame.

12 Q And you graduated there in?

13 A 2001.

14 Q From there you proceeded to law school?

15 A I did. I went to Indiana University,  
16 Bloomington, and graduated in 2004. I went straight  
17 through.

18 Q All right. Decided to come to the big  
19 city?

20 A I did. I was tired of the small town. I  
21 grew up in a small town in Indiana, so...

22 Q All right. And your first position here  
23 in Chicago was?

24 A My first job was with Macey & Aleman,  
25 also known as Legal Helpers. They do a lot of

1 bankruptcy work.

2 Q All right. And I think His Honor  
3 indicated he was well familiar with Legal Helpers.  
4 But what is Legal Helpers? It is a bunch of firms?

5 THE COURT: Oh, I don't know that I'm  
6 well familiar with them.

7 MR. JESSER: All right.

8 THE COURT: It's just one of the many  
9 firms that practices here.

10 BY MR. JESSER:

11 Q Is it a number of firms or...

12 A It's one firm. They have offices in a  
13 bunch of different states. It's very similar to a  
14 couple firms here in the city. It's based on volume  
15 business. Get as many people as you can, file  
16 petitions as quickly as possible, basically.

17 Q How long did you spend at that firm?

18 A A little over a year. I believe December  
19 of '04 to January of '06.

20 Q Did you do mostly or exclusively  
21 bankruptcy work there?

22 A I did all of the bankruptcies, mostly  
23 Chapter 7s.

24 Q How many other attorneys were working  
25 with you there?

1           A     In our office, in the Chicago office,  
2     there was probably 25 other attorneys.

3           Q     All right. And just for clarity, you did  
4     not represent Dr. Smith in his first bankruptcy  
5     petition filed in 2004?

6           A     No, I did not.

7           Q     All right.

8           A     I wasn't even licensed, I don't think, if  
9     I recall.

10          THE COURT: So you were at Legal Helpers  
11     when he filed his second petition?

12          THE WITNESS: That's correct.

13          THE COURT: And you helped him prepare  
14     it?

15          THE WITNESS: I did. I met with him,  
16     went over the petition when he signed it. It was  
17     a -- and then I did the filing.

18          THE COURT: Go ahead.

19     BY MR. JESSER:

20          Q     And you somehow do remember Dr. Smith of  
21     all of the many clients you had?

22          A     I do. I only remember a couple of cases.  
23     I remember his just because of the nature of the  
24     cases that are at issue. My father is a doctor, and  
25     so medical malpractice kind of just stuck out in my

1 mind. It kind of hit home, if you will, so...

2 Q How many times do you recall having  
3 conferred with Dr. Smith?

4 A Just once.

5 Q All right. And at that point in time,  
6 was anything unusual occurring in your office?

7 A The bankruptcy reform law was going into  
8 effect. It was probably -- I remember meeting with  
9 him right before that. I don't remember the exact  
10 date. Probably September of 2005. So my job at  
11 that time was I met with all of our clients to file  
12 their petitions before the law changed, and so I met  
13 with anywhere from 10 to 20 people a day. And it  
14 was my job to go through the petition with them and  
15 make sure everything was accurate before we filed.

16 Q Am I correct you met him on a Saturday,  
17 or you don't recall?

18 A I don't recall what day it was.

19 Q Okay. Can you explain to His Honor how  
20 the petitions were prepared within this firm before  
21 they reached you.

22 A The petitions were usually prepared by  
23 either a legal assistant or a law clerk or a  
24 paralegal-type employee. They were then mailed out  
25 to the clients to make corrections, come back to us,

1 and then we would meet with them to go over and  
2 ensure that everything was correct, and then we  
3 would file the case for them or file the petition.

4 Q On the day on which you met with  
5 Dr. Smith, do you have an independent recollection  
6 that you met with other clients as well?

7 A Yeah, I did. I met with quite a few, I'm  
8 sure. But I don't know the exact number.

9 Q Do you recall how long approximately you  
10 spent with Dr. Smith?

11 A Probably -- I believe I spent probably  
12 half an hour or so with him, probably a little bit  
13 longer just because I was asking about the cases  
14 that were on the statement of financial affairs and  
15 the cases at issue, basically.

16 Q Now, these two lawsuits, I'm not sure  
17 when you walked in, but we have conferred in the  
18 past that Mr. Robinson was prosecuting in state  
19 court, although they're on the bankruptcy calendar  
20 right now, they are within the four corners of the  
21 2005 voluntary petition that your firm filed on  
22 behalf of Dr. Smith?

23 A Yeah. I mean, if you're asking that  
24 they're listed somewhere in there, they're on the  
25 statement of financial affairs.

1           Q    Can you explain to His Honor why it so  
2 happened that even after your review of these two  
3 matters were listed on the statement of financial  
4 affairs as opposed to the schedule?

5           A    Well, I know they're listed on there  
6 because anytime there was any ongoing litigation, I  
7 put it on the statement of financial affairs.  
8 Probably -- I typically would list them as creditors  
9 as well. I'm not sure why I did not. I don't  
10 recall why they weren't on Schedule F.

11           THE COURT: Did you have his earlier  
12 bankruptcy that was filed earlier and dismissed  
13 before you?

14           THE WITNESS: I had reviewed it. I don't  
15 remember if I had it in front of me when we met.

16           THE COURT: You didn't go over it page by  
17 page to see if you covered the same topics?

18           THE WITNESS: I know that I would have.  
19 I mean, I don't remember the exact situation. But  
20 anytime there was a prior bankruptcy, I always  
21 reviewed the prior petition as well.

22           THE COURT: Well, the prior petition did  
23 schedule in the schedule of creditors the two  
24 lawsuits that were pending in state court. Can you  
25 explain why they were not scheduled in the new

1 lawsuit that you went over?

2 THE WITNESS: I know that they were  
3 scheduled on Schedule F just because I reviewed both  
4 petitions recently because this matter came up. I  
5 do not know why they were omitted from Schedule F.  
6 To the best of my knowledge, it was just an error on  
7 my part.

8 THE COURT: Well, you said you went over  
9 the finished product with your client.

10 THE WITNESS: I did.

11 THE COURT: Did your client do something  
12 to indicate whether or not what you had prepared was  
13 accurate and complete?

14 THE WITNESS: We went through and I asked  
15 him -- basically I went through all of the creditors  
16 that were listed and asked him if they were supposed  
17 to be on there, and then I asked if there were any  
18 other creditors. That's basically what I did with  
19 every client I met with.

20 THE COURT: Do you remember what he said  
21 when you asked him if there were any other  
22 creditors?

23 THE WITNESS: I do not remember the  
24 specific conversation. I just know that's the way I  
25 handled things.

1           THE COURT: If he had told you there were  
2 other creditors, would you have added them to the  
3 list or omitted them?

4           THE WITNESS: I would have added them.

5           THE COURT: Now, these days, for a while,  
6 for several years, all filings have been electronic  
7 in our court here.

8           THE WITNESS: That's correct.

9           THE COURT: And signatures on the  
10 petitions are electronic signatures, right?

11          THE WITNESS: Um-hmm, yes.

12          THE COURT: So in what way did he signify  
13 his approval of the accuracy and completeness?

14          THE WITNESS: I'm pretty sure it was an  
15 electronic signature.

16          THE COURT: A what?

17          THE WITNESS: Electronic signature.

18          THE COURT: Well, he doesn't affix it.  
19 Who affixes it?

20          THE WITNESS: Well, we would have typed  
21 it into the petition.

22          THE COURT: Right. And when you say  
23 "electronic signature," apart from typing in his  
24 name, what else was done, if anything, to put his  
25 electronic signature on it?



1 THE WITNESS: I know there was -- are you  
2 referring -- there was a signature page that he had  
3 to actually sign to certify that the electronic  
4 signature was his.

5 THE COURT: So you retained that? Or  
6 that is to say your office retained that?

7 THE WITNESS: They would have, yes.

8 THE COURT: Okay. Did he sign anything  
9 like that?

10 THE WITNESS: I don't recall, but I would  
11 go ahead and say yes because we wouldn't have been  
12 able to file the petition otherwise.

13 THE COURT: Okay.

14 MR. JESSER: And, Judge, may I --

15 THE COURT: Go ahead, counsel.

16 MR. JESSER: -- just inject --

17 THE COURT: You want to what?

18 MR. JESSER: May I just inject for the  
19 court's clarification --

20 THE COURT: Go ahead. Let the witness do  
21 the injecting.

22 MR. JESSER: Okay.

23 BY MR. JESSER:

24 Q Notwithstanding our -- we attorneys, our  
25 high accountability to the court to be factually

1 correct and to be forthright at all times, were you  
2 under some pressure in your office at that time  
3 regarding your daily or weekly production?

4 A Yeah, I was. I mean, we were putting a  
5 lot of hours in just because of the volume right  
6 before that launching. General volume business was,  
7 I mean, ridiculous. But, I mean, I was within my  
8 first year as an associate. I was just -- you know,  
9 they said be there 12 hours, I was there 12 hours.  
10 So it was -- I was seeing a lot of people.

11 Q And when they said to be there for 12  
12 hours, were they saying that with a smile on their  
13 face and...

14 A Usually as they left around like 4:00 or  
15 so, yeah.

16 Q Okay. Now, you did feel at the time  
17 that placing doctor's lawsuits on the statement of  
18 financial affairs was legally efficacious, legally  
19 permissible?

20 A Well, I listed them on there just to show  
21 pending litigation. I believe that I would have --  
22 I should have listed them on Schedule F as well,  
23 though.

24 Q Did doctor indicate -- strike that.

25 Did doctor express or imply to you

1 that he wanted you to withhold any information from  
2 his creditors?

3 A No. I mean, that would definitely stick  
4 out in my mind if he had because, I mean, I  
5 obviously wouldn't have gone along with anything  
6 like that.

7 Q Well, that was my next question. Did  
8 doctor request that you do anything that you felt  
9 was either not ethical or in violation of the Code  
10 of Professional Responsibility?

11 A No, absolutely not.

12 Q Did doctor ever request you to do  
13 something or not do something that you felt was  
14 contrary to the rights of his creditors?

15 A No, no, he didn't ask me to do anything.

16 Q Did doctor ever say anything to you or  
17 imply anything to you that you felt was contrary to  
18 your obligations to the United States Bankruptcy  
19 Court?

20 A No.

21 Q Did you have any personal interest in  
22 secreting any information from doctor's creditors?

23 A No.

24 Q Or from the court?

25 A No.

1 Q Did you make any observations or opinions  
2 regarding doctor's comportment, whether he seemed  
3 forthcoming or evasive with you or nervous?

4 A No. I remember -- I mean, this is really  
5 the only reason why I even remember meeting with  
6 him, was because of these cases. And I remembered  
7 to ask him -- I asked him about it, but told him,  
8 you know, I didn't want to know anything about the  
9 state case, just give me as few details as possible.  
10 But, I mean, he was -- my recollection is that he  
11 was very forthcoming with me. I mean, he was pretty  
12 open to talk about it and what his situation was.

13 MR. JESSER: Thank you very much. I have  
14 nothing further at this time.

15 THE COURT: Cross?

16 MR. ROBINSON: Yes, Judge, I have a few  
17 questions.

18 CROSS-EXAMINATION

19 BY MR. ROBINSON:

20 Q Attorney Sinn, you stated -- as you sit  
21 here today, do you believe that pending litigation  
22 should be on the schedule of creditors or statement  
23 of financial affairs?

24 A Well, I believe it should be on the  
25 statement of financial affairs, but I believe that

1 the creditors should also be listed on Schedule F as  
2 potential creditors.

3 Q And where did you learn that from?

4 A Basically I just kind of picked --  
5 through my year working there -- or just to kind of  
6 get into it a little bit, our training wasn't the  
7 greatest. You know, it was kind of by trial and  
8 error. And I would have eventually figured that out  
9 looking at the bankruptcy code and talking to other  
10 bankruptcy attorneys.

11 Q Now, prior to filing the bankruptcy  
12 petition for Dr. Smith --

13 A Yes.

14 Q -- how long had you been practicing  
15 bankruptcy?

16 A At that point, probably seven or eight  
17 months.

18 Q Approximately how many Chapter 7s had you  
19 filed?

20 A In the little over the year I was there,  
21 Chapter 7 petitions, I maybe filed 350, 400. I  
22 mean, quite a bit.

23 Q You testified earlier there was  
24 approximately 25 bankruptcy attorneys in that  
25 Chicago office?

1           A    To the best of my recollection, yeah.

2           Q    The same office that you work at; isn't  
3 that true?

4           A    I don't work there anymore. But when I  
5 worked there, yeah.

6           Q    But the office you worked at when you  
7 filed the bankruptcy petition for Dr. Smith?

8           A    That's correct.

9           Q    Wouldn't it be safe to say that the  
10 experience of the attorneys working at that office  
11 varied?

12          A    Yeah, it did. The majority of the  
13 attorneys were less than a year. It was a pretty  
14 high turnover rate. But there were several that had  
15 been practicing three or four years.

16          Q    Wouldn't it also be safe to say that if  
17 you had any questions concerning the bankruptcy  
18 petition that you could talk to one of the more  
19 experienced attorneys?

20          A    Absolutely. If I had questions, that's  
21 what I'd do.

22               MR. ROBINSON: No further questions,  
23 Judge.

24               THE COURT: Redirect?  
25

REDIRECT EXAMINATION

BY MR. JESSER:

Q Did the firm have any formal training or in-services?

A Not really. My first day, they just gave me a stack of bills and told me to type a petition and figure it out. My training was basically if I had questions, there were several attorneys I thought I could ask questions to, and they would clarify things for me.

Q How would you characterize the fact that the lawsuits in question were not on the schedule of creditors? As an oversight or...

A I mean, I really just think it was an oversight, I mean, on my part.

MR. JESSER: All right. Thank you.

May I reopen to ask one more question?

THE COURT: Go ahead.

BY MR. JESSER:

Q Did Dr. Smith demonstrate to you any particular layman's knowledge of bankruptcy law by virtue of the fact that he had been through the process once before?

A I mean, I don't recall, so not to my

1 knowledge.

2 MR. JESSER: Thank you.

3 THE COURT: All righty.

4 Are you finished?

5 MR. ROBINSON: I'm finished.

6 THE COURT: May step down. Thank you,  
7 sir.

8 THE WITNESS: Thanks a lot.

9 MR. JESSER: May he be excused, Your  
10 Honor.

11 THE COURT: Yes, of course.

12 Is that all right with you?

13 MR. ROBINSON: Yes, Judge.

14 THE COURT: All right.

15 You're excused. Thank you.

16 (Witness excused.)

17 THE COURT: And do you have another  
18 witness?

19 MR. JESSER: Yes. Our last witness is  
20 Dr. Bruce S. Smith.

21 THE COURT: Doctor, will you please take  
22 the stand.

23 (Witness sworn.)

24 THE CLERK: Please state your name for  
25 the record.



1 THE WITNESS: Bruce Smith.

2 THE CLERK: You may be seated.

3 MR. JESSER: All right. Good afternoon,  
4 Doctor.

5 BRUCE SMITH, WITNESS, SWORN

6 DIRECT EXAMINATION

7 BY MR. JESSER:

8 Q I'd like to spend just a few moments with  
9 you concerning your background for the court's  
10 knowledge. When were you born?

11 A 1952.

12 Q And where did you grow up?

13 A Brooklyn, New York.

14 Q Which part of Brooklyn, New York?

15 A South Brooklyn.

16 Q All right. And in those days, was that a  
17 nice neighborhood?

18 A It was the projects.

19 Q And you went to elementary school in  
20 South Brooklyn?

21 A Yes.

22 Q By the time you reached high school --  
23 was there a high school right across the street from  
24 you?

25 A Yes.

1 Q What was the name of that high school, do  
2 you recall?

3 A East New York Vocational High School.

4 Q All right. Did you attend that high  
5 school?

6 A No, I did not.

7 Q Where did you attend high school?

8 A Brooklyn Technical High School.

9 Q And how long did it take you to commute  
10 there?

11 A An hour.

12 Q Each way?

13 A Yes.

14 Q How did you do so?

15 A Subway.

16 Q And when you matriculated at Brooklyn  
17 Technical, how many students were there?

18 A About 6,000 boys.

19 Q All right. So it sounds like Lane  
20 Technical. Would that be a fair comparison?

21 A There are some similarities between the  
22 two schools.

23 Q All right. And when you matriculated  
24 there, what was the composition of the school, the  
25 racial composition?

1           A    Well, I don't know the exact composition,  
2 but there were only 50 Black and Puerto Rican  
3 students. The rest were white.

4           Q    And you were one of the 50?

5           A    Yes.

6           Q    All right. And by the time you graduated  
7 Brooklyn Technical, had you been awarded any  
8 scholarships?

9           A    I got the National Merit Scholarship.

10          Q    All right. And did they have something  
11 similar to a major or area of concentration at  
12 Brooklyn Technical?

13          A    Yes. I majored in structural  
14 engineering.

15          Q    Was that unusual for a young man from  
16 South Brooklyn?

17          A    It's unusual for anybody. It's one of  
18 the few high schools -- it was one of the six  
19 science high schools in New York where you could  
20 have a major as a high school student.

21          Q    From there did you proceed to college?

22          A    Yes. To the University of Connecticut  
23 after that.

24          Q    And you transferred from UCON?

25          A    No. I actually left UCON because I

1 couldn't afford the tuition anymore. My scholarship  
2 only covered --

3 THE COURT: Sir, pull the microphone much  
4 closer to you.

5 THE WITNESS: I actually withdrew --

6 THE COURT: Slide it closer, please.

7 THE WITNESS: I actually withdrew from  
8 the University of Connecticut to join the military  
9 to get the GI Bill.

10 BY MR. JESSER:

11 Q At the time that you withdrew, do you  
12 recall your grade point average?

13 A I don't remember. I think it was like  
14 3.0 or something like that.

15 Q All right. And then which branch of  
16 service did you serve?

17 A The U.S. Army.

18 Q And how many years did you serve?

19 A Three.

20 Q This was in wartime?

21 A It was at the end of the Vietnam War.

22 Q In which divisions did you serve?

23 A It was in military intelligence.

24 Q And did that take you to different parts  
25 of the homeland or overseas?

1 A Mostly in the U.S. We were assigned to  
2 go overseas, but we never went.

3 Q All right. After your second tour, would  
4 that be, was completed for three years, then where  
5 did you go?

6 A Then I went back to school. I went to  
7 the University of Hartford in Connecticut.

8 Q And that was partially -- did they still  
9 have the GI Bill in those days?

10 A Yes. That's what I used to go.

11 Q And you graduated from the University of  
12 Hartford?

13 A Yes.

14 Q Which year was that?

15 A 1980.

16 Q Did you have enough money to go to  
17 medical school at that time?

18 A No.

19 Q What did you do then?

20 A I was a -- well, I did several things.  
21 One, I was a high school teacher for about six  
22 years.

23 Q And that was back in New York or --

24 A Yes, high school, a New York teacher.

25 Q All right. Were those in easy schools?

1           A     Actually, it was a pretty good school.  
2     It was Christ the King High School in Middle  
3     Village, New York.

4           Q     All right. I think that's a pretty  
5     prominent basketball school, isn't it?

6           A     It's number one in the country.

7           Q     Okay. That takes us to about 1986. By  
8     the way, I may be a New York attorney, but I don't  
9     know the geography that well. Did you say that  
10    Brooklyn was next to Queens?

11          A     Yes.

12          Q     So Secretary Powell -- General Powell  
13    grew up nearby?

14          A     Yes.

15          Q     All right. In 1986 were you able to go  
16    to medical school?

17          A     Yes.

18          Q     And where was that?

19          A     At Loyola University.

20          Q     Of Chicago?

21          A     Yes.

22          Q     And when did you graduate?

23          A     1992.

24          Q     All right. Did you have any distinctions  
25    in medical school?

1 A No.

2 Q All right. Did you proceed directly into  
3 residency?

4 A Yes, I did.

5 Q By the way, didn't we miss some civilian  
6 employment for a pharmaceutical house?

7 A No. That was after my residency.

8 Q Okay. All right. And which residency  
9 did you pursue?

10 A Obstetrics and gynecology.

11 Q And where were you matched into a  
12 residency?

13 A Mount Sinai of Chicago.

14 Q All right. And Mount Sinai was in those  
15 days affiliated with a medical school, University of  
16 Chicago Medical School?

17 A I believe so, yes.

18 Q All right. And did you then complete a  
19 residency on a continuous basis or an interrupted  
20 basis?

21 A Continuous.

22 Q And how long was that residency?

23 A Four years.

24 Q So that takes us to about 1996 or so?

25 A Yes.

1 Q All right. You're not board certified in  
2 obstetrics or gynecology?

3 A Not yet.

4 Q Are you yet board-eligible?

5 A I'm board-eligible.

6 Q But you still have time to take the oral  
7 exams?

8 A Yes.

9 Q Have you taken the written exams?

10 A Yes.

11 Q And you've passed those?

12 A I passed it the first time, yes.

13 Q All right. Is it like an integrated  
14 OB-GYN, or do you pass writtens in OB and then you  
15 pass writtens in GYN?

16 A It's integrated. You take a complete  
17 exam, and then you have to present cases, surgical  
18 cases and obstetric cases orally.

19 Q Okay. So at the end of this journey of  
20 Brooklyn Technical and UCON and the University of  
21 Hartford and Loyola, some years later, 1996, you  
22 went in -- in Mount Sinai in 1996 you went into  
23 practice?

24 A Yes.

25 Q Can you explain to His Honor how your



1 practice evolved from one location to another and  
2 the medical staffs to which you were admitted.

3 A I started at Trinity Hospital on the  
4 south side. I worked for Dr. Kennedy as an  
5 associate.

6 Q And you were on the medical staff at  
7 which -- at Trinity?

8 A At Trinity and Michael Reese Hospital.

9 Q Where was your office at Trinity?

10 A 93rd Street.

11 Q Was that an outbuilding or a doctor's  
12 building?

13 A It's a doctor's building across the  
14 street.

15 Q All right. You were his associate. I  
16 don't know who he is. Was he an older practitioner?

17 A Yes.

18 Q And then did you move into another  
19 practice or your own practice?

20 A No. I went to work at Michael Reese  
21 Hospital as an employee at the hospital. I stayed  
22 there for two years. Then I moved to Streator,  
23 Illinois, and started my own practice.

24 Q All right. Now, Michael Reese years ago  
25 was one of the most prominent maternity centers in

1 the city?

2 A Yes.

3 Q All right. Then somewhere in this period  
4 of time was there Glaxo or the pharmaceutical --

5 A Yes. I was on the National Speakers  
6 Bureau for GlaxoSmithKline.

7 Q What does that mean, National Speakers  
8 Bureau?

9 A I went around the country. I was the  
10 expert from out of town that gave lectures on the  
11 various products to doctors.

12 Q Were there any other medical staffs on  
13 which you were attending physician other than  
14 Trinity and Reese?

15 A Lincoln Park Hospital.

16 Q And that's the old Grant Hospital?

17 A Yes.

18 Q Okay. During your residency at Sinai,  
19 did you serve an underserved population?

20 A Yes.

21 Q Did you serve an affluent clientele?

22 A No. Well, a few. A few baseball  
23 players, I took care of their wives.

24 Q All right. But, otherwise, what types of  
25 patients did you deliver and tend to in their

1       gynecological disorders?

2               A     Mostly public aid patients or uninsured  
3       patients.

4               Q     Was this the experience you had at  
5       Trinity and at Reese as well?

6               A     Yes.

7               Q     Were many of those patients appreciative?

8               A     Most.

9               Q     Were some of those patients very  
10      difficult?

11              A     Some.

12              Q     Let's just talk for a moment or two about  
13      your current practice in Streator, Illinois. Where  
14      is Streator, Illinois?

15              A     It's in LaSalle County. It's about an  
16      hour-and-a-half south of Chicago.

17              Q     Are there many obstetricians in Streator,  
18      Illinois?

19              A     No, there aren't. There's three. I'm  
20      one of the three.

21              Q     And there have been times I've asked you  
22      to come to Chicago, but you've been on call?

23              A     Yes.

24              Q     And that's a problem?

25              A     Yes. It's very difficult to find

1 coverage because only one of the other obstetricians  
2 actually has obstetrical privileges. The other one  
3 is retired, semi-retired.

4 Q You've had a license to practice in  
5 Illinois since 1990 something; is that correct?

6 A That's correct.

7 Q I'm losing track of the years here.

8 A I guess since 1994.

9 Q Has your -- are you in good standing with  
10 the Illinois State Department of Financial and  
11 Professional Regulation Division of Professional  
12 Regulation?

13 A Yes, I am.

14 Q Has that good standing ever been  
15 interrupted?

16 A No.

17 Q And do you have an active obstetrical and  
18 gynecological practice in Streator, Illinois?

19 A Yes.

20 Q Now, you in the year 2004 sought  
21 bankruptcy relief in the United States Bankruptcy  
22 Court for the Northern District of Illinois?

23 A That's correct.

24 Q And we've been through the exhibits  
25 before coming to court. The voluntary petition you

1 filed with the assistance of this Legal Finders  
2 thing was what you understand to be Exhibit 1 which  
3 His Honor has?

4 A Yes.

5 Q And that petition was discharged by the  
6 court?

7 THE COURT: Dismissed.

8 MR. JESSER: Dismissed --

9 THE WITNESS: Dismissed.

10 MR. JESSER: -- by the court.

11 THE WITNESS: Yes.

12 BY MR. JESSER:

13 Q But in the year 2005, apparently you  
14 reassessed the need to again seek bankruptcy relief;  
15 is that correct?

16 A That's correct.

17 Q Now, the first firm to which you went, I  
18 believe it was on North Wells Street, was a  
19 different firm from that firm in which Mr. Sinn  
20 practiced?

21 A Yes.

22 Q Okay. And did you visit this second  
23 Legal Finders firm for the 2005 petition that came  
24 before His Honor as the first petition, the '04 had  
25 come before His Honor, did you visit this Legal

1 Finders firm in the year 2005 once or more than  
2 once?

3 A Just once.

4 Q Okay. Did you have any intention -- and  
5 I'll have to dissect this question a little. Did  
6 you have any intention to defraud or mislead or  
7 secrete from your creditors the fact that you were  
8 seeking bankruptcy relief for a second time?

9 A No. I wanted to make sure that they all  
10 knew.

11 Q Did you ever express or imply to Mr. Sinn  
12 that you wanted something covered up or not said or  
13 put in the wrong place so that Mr. Robinson's  
14 clients wouldn't find out about the second  
15 bankruptcy?

16 A No, I didn't.

17 Q Did you have any intention to mislead or  
18 secrete from Mr. Robinson or from Judge Schmetterer,  
19 although that doesn't make any sense because the  
20 case was coming before him again, any information  
21 about your creditors?

22 A No.

23 Q Having now gone through bankruptcy relief  
24 for the second time, did you consider yourself some  
25 sort of a lay expert on bankruptcy law?

1 A No, not at all.

2 Q Did you rely on what Mr. Sinn was -- on  
3 the counseling and the advice he was providing to  
4 you?

5 A Yes.

6 Q And whether you signed the second  
7 petition, which was the 2005 petition, manually  
8 and/or electronically, as you sit here today, you're  
9 not backing away -- strike that.

10 You're not denying that it's your  
11 petition?

12 A No. I was under the understanding that  
13 everything that was on the first petition was on the  
14 second petition and everything was included that I  
15 gave them, and that's what I signed.

16 Q And on the first petition in 2004, you  
17 now have the knowledge that Mr. Robinson was listed  
18 under the creditors section?

19 A Yes.

20 Q Okay.

21 A And I did not understand the difference  
22 between sections. I just thought it was a  
23 bankruptcy filing and everybody on the paper which I  
24 was asked to sign was notified and included.

25 Q And before you signed the second petition

1 which you filed in 2005, you indeed --

2 MR. JESSER: Forgive me if I'm leading,  
3 Judge.

4 BY MR. JESSER:

5 Q But you indeed observed that Ms. Tidwell  
6 and Ms. Sterling-Ahalla were listed within the four  
7 corners of the 2005 voluntary petition?

8 A Yes.

9 Q You didn't realize then that where they  
10 were listed would become a problem and end up in  
11 court today?

12 A No, not whatsoever.

13 Q Did you in the military as a military --  
14 did you say intelligence officer?

15 A Yes.

16 Q Did you have to -- well, to join the  
17 United States Army, did you have to take an oath?

18 A Yes.

19 Q Did being a military officer require you  
20 to swear to any additional code of conduct?

21 A Yes.

22 Q What was that code of conduct?

23 A I'm sorry, Your Honor.

24 Q Are you on call right now?

25 A No. I just leaned on the button.



1 Q What was that code of conduct?

2 A Just a standard U.S. Army military code  
3 of conduct.

4 Q Did Mr. Sinn suggest to you any clever  
5 ways of not having Ms. Tidwell or  
6 Ms. Sterling-Ahalla not find out about the second  
7 bankruptcy?

8 A No, not at all. As I stated before, I  
9 wanted everybody to know.

10 THE COURT: Sir, those cases Mr. Robinson  
11 had filed against you in state court, they were for  
12 a medical malpractice, were they, or not?

13 THE WITNESS: No, not medical  
14 malpractice.

15 THE COURT: They were for something else?

16 THE WITNESS: Yes.

17 THE COURT: Did you have any form of  
18 insurance that defended you for those cases?

19 THE WITNESS: I had insurance that  
20 defended me for legal costs, but not for --

21 THE COURT: Say again. Louder, please.

22 THE WITNESS: I had insurance. But the  
23 way the insurance was interpreted, they would  
24 provide legal counsel but not pay any claims because  
25 it wasn't --

1 THE COURT: Did they provide counsel?

2 THE WITNESS: Yes, they did.

3 THE COURT: And when you say it was  
4 interpreted that way, was that by a declaration of a  
5 court or by the insurance company's point of view?

6 THE WITNESS: By the insurance company.  
7 It was pretty gracious on their part because I had  
8 actually fallen out of the grace period for the  
9 insurance policy.

10 THE COURT: So the lawyer defending you  
11 in state court in those cases brought by  
12 Mr. Robinson, they were insurance-funded lawyers?

13 THE WITNESS: Yes.

14 THE COURT: Did you have -- what did you  
15 call the insurance policy that they defended you  
16 under?

17 THE WITNESS: It was under a medical  
18 malpractice insurance policy, but it was a  
19 claims-made policy and not an occurrence policy,  
20 which means that after a certain time frame, any  
21 claims that came in would not be covered unless I  
22 had purchased a tail.

23 THE COURT: Did you purchase a tail?

24 THE WITNESS: No, I did not.

25 THE COURT: Were your contacts with his

1 clients while you were in practice where?

2 THE WITNESS: At Kennedy Medical Center  
3 as an employee of Dr. Kennedy.

4 THE COURT: Did Dr. Kennedy's practice  
5 have any insurance --

6 THE WITNESS: Yes.

7 THE COURT: -- that he provided for his  
8 employees?

9 THE WITNESS: Dr. Kennedy -- this is a  
10 bone of contention. Dr. Kennedy -- I was insured by  
11 a policy purchased by Dr. Kennedy. But when the  
12 policy was up, Dr. Kennedy chose not to purchase the  
13 tail for that policy, and --

14 THE COURT: And then --

15 THE WITNESS: -- I was on my own after  
16 that.

17 THE COURT: And you went to work where?

18 THE WITNESS: At Michael Reese Hospital.

19 THE COURT: Did the hospital provide you  
20 with any insurance?

21 THE WITNESS: Yes, they did.

22 THE COURT: Starting -- which covered you  
23 from what date?

24 THE WITNESS: From the day I started  
25 working for them.

1 THE COURT: Did you file any actions  
2 against the insurance company to seek a declaration  
3 that it covered you for any recovery that might come  
4 against you for the suits --

5 THE WITNESS: No, I didn't.

6 THE COURT: -- represented by  
7 Mr. Robinson?

8 THE WITNESS: No, Your Honor.

9 THE COURT: You did not?

10 THE WITNESS: At this time, Your Honor, I  
11 was broke and unable to afford an attorney. And at  
12 the same time, my son was in the ICU at  
13 Northwestern.

14 THE COURT: Okay.

15 THE WITNESS: So I was, you know, unable  
16 to pursue any --

17 THE COURT: You're telling me that if for  
18 any reason the suits got revived in state court,  
19 you'd be represented by insurance-funded lawyers.  
20 But if you lost, the insurance company would not pay  
21 for anything against you; is that what you're  
22 saying?

23 THE WITNESS: That's correct.

24 THE COURT: All right.

25 BY MR. JESSER:

1 Q And those attorneys are Johnson & Bell?

2 A Yes.

3 Q And were the two cases which are being  
4 mothballed down in the bankruptcy section to be  
5 revived, that would be your personal attorney?

6 A Yes.

7 Q I feel like Mike Ditka and forgot his  
8 whole family at the Hall of Fame. I never asked you  
9 about your family. You're married?

10 A Yes.

11 Q And you have children?

12 A Yes.

13 Q And what are their ages?

14 A Eleven, two, and one.

15 Q Nine months?

16 A Yes.

17 Q All right. And which hospitals are you  
18 on staff at in LaSalle County?

19 A Only St. Mary's.

20 Q Is that the only hospital in Streator?

21 A Yes, it is.

22 Q What is high-risk obstetrics?

23 A High-risk obstetrics basically is  
24 obstetrics involving patients who are outside the  
25 normal range, meaning a normal pregnancy, nine

1 months, no medical problems, no prior history of  
2 obstetrical problems.

3 Q And occasionally even in the finest  
4 facilities these can lead to catastrophic deliveries  
5 and catastrophic lawsuits; is that correct?

6 A That's correct.

7 Q How many years have you dealt with  
8 high-risk pregnancy?

9 A Eleven years now.

10 Q And did you deal with it in training as  
11 well?

12 A Yes.

13 Q And does your practice now include  
14 high-risk pregnancy?

15 A Yes, it does.

16 MR. JESSER: Your Honor, even though as  
17 part of their complaints the plaintiffs alleged  
18 intentional conduct on the part of doctor toward  
19 them, Your Honor told us months ago you would not be  
20 receiving any evidence concerning the underlying  
21 facts, so I'm not going there.

22 THE COURT: Sir, I'm not going to stop  
23 you from offering into evidence -- you want subject  
24 to the possibility that your opponent may object and  
25 I'll have to pass on objections.

1 MR. JESSER: All right.

2 THE COURT: But it's clear, of course,  
3 that in no way am I going to decide the issues  
4 pending in the state court case. But if you thought  
5 they were relevant, don't let anything I may have  
6 said some time ago dissuade you from --

7 MR. JESSER: All right. Well --

8 THE COURT: -- putting it on here, okay?

9 MR. JESSER: All right.

10 BY MR. JESSER:

11 Q Doctor, as part of her amended complaint  
12 before Judge Schmetterer, Sandra Sterling-Ahalla has  
13 alleged, among other things, that you committed  
14 intentionally sexual assault against her; is that  
15 correct? Is it correct that you committed on an  
16 intentional basis any -- putting her in apprehension  
17 of being battered or that you inappropriately or  
18 maliciously touched her?

19 MR. ROBINSON: Object to that, Judge. I  
20 object to that question, Judge.

21 THE COURT: What is your objection?

22 MR. ROBINSON: Well, one of the bases is  
23 relevance. He's having the witness make testimony  
24 as to conclusion of law.

25 THE COURT: Not yet. Anything else?

1 MR. ROBINSON: No, Judge.

2 THE COURT: Why do you think it's  
3 relevant, counsel?

4 MR. JESSER: Because it's -- I'm reciting  
5 it out of the plaintiffs' own complaint.

6 THE COURT: I know.

7 MR. JESSER: I don't have to --

8 THE COURT: Why do you think it's  
9 relevant here?

10 MR. JESSER: I don't have to go there,  
11 Judge. I appreciate the latitude you've given me,  
12 but I can withdraw the question.

13 THE COURT: Very well.

14 MR. JESSER: I have nothing further at  
15 this time.

16 THE COURT: Cross?

17 MR. ROBINSON: Yes, Judge, a couple of  
18 quick questions.

19 CROSS-EXAMINATION

20 BY MR. ROBINSON:

21 Q Dr. Smith, by the time you filed your  
22 2005 bankruptcy petition you were aware of the  
23 pending lawsuits by Trina Tidwell and Sandra  
24 Ahalla-Sterling; is that correct?

25 A That's correct.



1 Q And your attorneys in the underlying  
2 state case were Johnson & Bell; wasn't that correct?

3 A Yes.

4 Q And when you filed that petition in  
5 September of '05, did you inform them about that  
6 bankruptcy petition?

7 A Yes, I did.

8 Q Can you recall approximately when you let  
9 them know you filed that bankruptcy petition?

10 A No. I don't remember.

11 Q You don't remember?

12 Would it be in October?

13 A I don't remember exactly when it was.

14 Q December?

15 A I just said I don't remember when it was.

16 MR. ROBINSON: No further questions,  
17 Judge.

18 REDIRECT EXAMINATION

19 BY MR. JESSER:

20 Q But you are aware that --

21 THE COURT: Wait, wait.

22 Have you finished your  
23 cross-examination?

24 MR. ROBINSON: Yes, that's all I'm going  
25 to take.

1 THE COURT: Okay.

2 Redirect. Go ahead.

3 BY MR. JESSER:

4 Q You are aware that Mr. Robinson has  
5 admitted into evidence without objection on our part  
6 a notice to Mr. Robinson from Johnson & Bell which  
7 Ms. Jones testified she received on December 23,  
8 2005; is that correct?

9 A That is correct.

10 Q And that pertained to notifying  
11 Mr. Robinson of the bankruptcy?

12 A Yes, I am aware that he was notified.

13 MR. JESSER: Thank you.

14 THE COURT: Sir, after you filed this  
15 bankruptcy case, the second bankruptcy case, were  
16 there any sessions in state court on the cases  
17 pending there?

18 THE WITNESS: Yes, there were.

19 THE COURT: Were you present in state  
20 court?

21 THE WITNESS: Yes, I was.

22 THE COURT: Approximately how long after  
23 you filed bankruptcy was the first time you remember  
24 being in state court on one of these cases?

25 THE WITNESS: You know, I don't really

1 remember, Your Honor.

2 THE COURT: A couple weeks or months or  
3 days?

4 THE WITNESS: It must have been months, I  
5 think.

6 THE COURT: Okay. Was it before or after  
7 the notice went out by your state court lawyers to  
8 mothball these state court cases?

9 THE WITNESS: In this particular case, I  
10 don't think I was in court again.

11 THE COURT: Well, after you filed  
12 bankruptcy, did you go to court on those state court  
13 cases?

14 THE WITNESS: On these? No. On these  
15 two particular cases? No.

16 THE COURT: No?

17 Okay. Do you have any more  
18 questions of the witness?

19 MR. ROBINSON: No further questions,  
20 Judge.

21 THE COURT: Do you have any more  
22 questions of the witness?

23 MR. JESSER: No, Your Honor.

24 THE COURT: You may step down, sir.  
25 Thank you very much.

1 (Witness excused.)

2 THE COURT: Do you have any more evidence  
3 to offer?

4 MR. JESSER: No, Your Honor. The defense  
5 rests.

6 THE COURT: You rest.

7 And do you have any rebuttal?

8 MR. ROBINSON: No rebuttal, Your Honor.

9 THE COURT: You rest in rebuttal?

10 MR. ROBINSON: Yes.

11 THE COURT: I'll hear your respective  
12 final argument.

13 Plaintiff.

14 MR. ROBINSON: Yes, Judge.

15 Judge, as mentioned in my findings  
16 of fact and conclusions of law, Judge, the purpose  
17 of --

18 THE COURT: May I just stop -- start on  
19 an issue?

20 MR. ROBINSON: Yes, Judge.

21 THE COURT: The reason I went into  
22 insurance was that there would be a different sort  
23 of issue than anybody has briefed if there were  
24 insurance that could pay any judgment. There's a  
25 line of cases the circuit has given us that might be

1 relevant in such a case.

2 Now, I have had testimony about  
3 being defended by a policy that has no possibility,  
4 the witness said, of actually paying off a judgment.  
5 Would you start by telling me whether or not you  
6 feel any of that is relevant to this case. I went  
7 into it only because there's a line of cases that  
8 might make it relevant if there was insurance that  
9 could pay a judgment. Do you feel it's relevant  
10 here or not?

11 MR. ROBINSON: Judge, no, I don't feel it  
12 is relevant. I am slightly familiar with that line  
13 of cases, Judge.

14 THE COURT: Pardon me?

15 MR. ROBINSON: I am slightly familiar  
16 with the ruling in that line of cases, Judge,  
17 particularly as it pertains to medical malpractice.  
18 Obviously we're claiming an intentional tort at this  
19 particular time, Judge. So I don't really feel it's  
20 relevant.

21 THE COURT: Okay.

22 And I don't suppose you think it is  
23 either?

24 MR. JESSER: No, Your Honor.

25 THE COURT: All right.

1        Go ahead with your argument, folks.

2 MR. ROBINSON: Yeah. Judge, as I started  
3 to say when I -- in the findings of fact and  
4 conclusions of law, Judge, obviously the purpose of  
5 requiring a debtor to list creditors with their  
6 proper --

7 THE COURT: Use the microphone. Speak  
8 closer to the --

9 MR. ROBINSON: Their proper --

10 THE COURT: -- microphone.

11 MR. ROBINSON: -- mailing address, Judge,  
12 is to afford us a due process and due notice to be  
13 able to object, Judge, to any discharge of any  
14 pending claims, Judge, as far as that is concerned.

15 Judge, as was testified to, a notice  
16 was faxed over to the Law Offices of Darryl Robinson  
17 on December 23rd, although he was on vacation and  
18 didn't receive knowledge of such notice until after  
19 January the 2nd in terms of that. As the case law  
20 basically supports, Judge, there's a difference  
21 between notice and knowledge. Because a notice came  
22 over doesn't necessarily mean that the plaintiff has  
23 knowledge of the pending bankruptcy. And as the  
24 case law supports in the in re Walker case, Judge --

25 THE COURT: Well, you had both notice and

1 knowledge, didn't you, two weeks ahead of the  
2 discharge?

3 MR. ROBINSON: I understand, Judge. But,  
4 obviously, as case law supports, Judge, the court  
5 must take into -- the total circumstances as far as  
6 that is concerned. And in looking at the total  
7 circumstances, the court must look at the knowledge  
8 of the parties, the opportunity that they may have  
9 to investigate the bankruptcy and find out what  
10 motions to file, if any, what adversary complaints  
11 they can file, if any. In the Walker case, if this  
12 court will remember, the individuals --

13 THE COURT: What case?

14 MR. JESSER: In re Walker case, Judge.  
15 The individuals had --

16 THE COURT: That was one of my opinions?

17 MR. ROBINSON: I don't know if it's one  
18 of your opinions, Judge?

19 THE COURT: You cited that in your --

20 MR. ROBINSON: Yes, I did. I cited that.

21 THE COURT: Walker. Okay.

22 MR. ROBINSON: In re Walker, Judge. And  
23 I cited that. And in that particular case, it was  
24 20 days, Judge, before the time elapsed to contest  
25 discharge. And the court in that particular case

1 says that 20 days was not enough. In this -- in our  
2 particular case, we're saying that we received  
3 knowledge within six days. So if 20 days is not  
4 enough in Walker, I don't understand how the  
5 defendant can think six days is enough,  
6 particularly, Judge --

7 THE COURT: In theory at least you could  
8 have rushed into bankruptcy court and made a motion  
9 to extend your time to file an adversary.

10 MR. ROBINSON: In theory, obviously,  
11 Judge. But in terms of --

12 THE COURT: Now, what have you to say  
13 about that theoretical possibility?

14 MR. ROBINSON: Well, in practice, Judge,  
15 it doesn't necessarily. In theory, obviously, it  
16 could have happened. In Walker it could have  
17 happened. But in -- Judge, the court has to take in  
18 the totality of the circumstances. For example, the  
19 knowledge of attorneys. There's no bankruptcy  
20 attorneys in that office on 1505 East Bankruptcy  
21 Court (sic), so an investigation would have to  
22 occur. So, in theory, an investigation would have  
23 to occur within those six days to understand which  
24 motions would have to be filed.

25 THE COURT: What kind of an



1 investigation?

2 MR. ROBINSON: An investigation into the  
3 bankruptcy, what type of bankruptcy it is, what  
4 claims that needed to be made. An attorney can't  
5 just run into bankruptcy court and file any motion.

6 THE COURT: What investigation would have  
7 to be made other than just getting a bankruptcy  
8 lawyer that knew what he or she was doing?

9 MR. ROBINSON: Well, I understand that,  
10 Judge, in terms of that.

11 THE COURT: I'm not being critical --

12 MR. ROBINSON: Right, I understand.

13 THE COURT: -- of a state court  
14 practitioner that is not familiar with the details  
15 of bankruptcy.

16 MR. ROBINSON: Right. I understand that,  
17 Judge.

18 THE COURT: I did a lot of practice  
19 myself outside of bankruptcy and had virtually no  
20 bankruptcy experience when I got this job.

21 MR. ROBINSON: Right. I understand,  
22 Judge.

23 THE COURT: But I learned some more about  
24 the bankruptcy at that point.

25 MR. ROBINSON: I do understand that,

1 Judge.

2 THE COURT: But isn't the lawyer in state  
3 court someone that would have to get some bankruptcy  
4 lawyer to help him out and interpret what the  
5 consequences were of everything?

6 MR. ROBINSON: Yes, Judge, that would be  
7 a part of the investigation as far as that is  
8 concerned, along with, Judge, like I said, the  
9 totality of the circumstances, managing of the  
10 caseload, dealing with every other situation in  
11 terms of -- at that particular time. Six days,  
12 Judge, still is not enough time to file a motion in  
13 bankruptcy court as far as contesting discharge.  
14 That still is our position as far as that is  
15 concerned, Judge.

16 THE COURT: Why did you take so long to  
17 file your litigation in federal court to upset the  
18 discharge?

19 MR. ROBINSON: After --

20 THE COURT: In other words, is there  
21 anything in this record that explains the answer to  
22 that question?

23 MR. ROBINSON: No, there's not anything  
24 in this record that explains the answer to that  
25 question. The adversary complaint in federal court

1 was not really filed until after the attorneys for  
2 Dr. Smith moved to dismiss the case in state court  
3 in terms of that, and that's when -- for example,  
4 the bankruptcy petition was filed, it was  
5 transferred over to the bankruptcy calendar. The  
6 attorneys for the plaintiff was not aware that the  
7 bankruptcy had been discharged, they hadn't received  
8 any information. They didn't even become aware that  
9 the bankruptcy had been discharged until the  
10 attorney for Dr. Smith had filed a motion to have  
11 the case dismissed in state court months after the  
12 discharge had taken place as far as that is  
13 concerned.

14 So in addition to that, Judge,  
15 Dr. Smith -- these cases were pending when he filed  
16 his petition in September. His attorneys were  
17 Johnson & Bell, the same attorneys who filed a  
18 motion to transfer to the bankruptcy calendar in  
19 December, almost three months after he had initially  
20 filed his notice for bankruptcy and --

21 THE COURT: What's your explanation --  
22 what's your argument, that is to say, as to why they  
23 waited three -- almost three months before filing a  
24 motion to mothball the cases on the bankruptcy  
25 calendar?

1 MR. ROBINSON: We think the evidence,  
2 Judge, basically supports and is all  
3 circumstantial -- the evidence basically supports is  
4 that they were trying to get the case discharged  
5 before the attorneys had an opportunity to object.  
6 Why would they file a motion for a hearing on  
7 January the 7th, three days before the time lapsed  
8 for discharge and ten days before the case was going  
9 to ask leave -- be discharged. What were they  
10 trying to gain by doing that?

11 THE COURT: Three days before the  
12 deadline for filing an adversary --

13 MR. ROBINSON: An adversary --

14 THE COURT: -- to object to discharge.

15 MR. ROBINSON: Yes, Judge, three days  
16 before the deadline and ten days before the actual  
17 discharge. What were the attorneys trying to gain  
18 at that particular point by transferring the case at  
19 that stage of the game? It just doesn't add up.  
20 It's all circumstantial evidence, Judge, but we --

21 THE COURT: What do you argue is inferred  
22 by the circumstantial evidence?

23 MR. ROBINSON: We're arguing that -- we  
24 infer that circumstantial evidence that, in fact,  
25 that they intend to deny the plaintiffs' proper

1 notice in being able to file that adversary.

2 THE COURT: You say you give -- you used  
3 the word "proper."

4 MR. ROBINSON: Proper notice means --

5 THE COURT: What do you mean by "proper  
6 notice"?

7 MR. ROBINSON: Notice in -- proper  
8 notice, Judge, in terms of notice to have enough  
9 time to contest a discharge.

10 THE COURT: How much time would have been  
11 enough time?

12 MR. ROBINSON: Probably two months would  
13 have been enough time.

14 THE COURT: How do we pick two months as  
15 opposed to two days or three months or one month?

16 MR. ROBINSON: Well, Judge, it's the  
17 timing of the notice. They filed it on  
18 December 23rd. There's a great likelihood that no  
19 one would have been in the office on the 23rd as far  
20 as that is concerned. It was around the holiday  
21 time. So if it was --

22 THE COURT: Part of this is your argument  
23 about when they filed the notice near the holiday --  
24 in the holiday season.

25 MR. ROBINSON: Yes, as part of the notice

1 to -- as far as that is concerned, Judge. Not only  
2 that, because, as a practicing attorney, I do know  
3 those tricks take place. So it was a lot of  
4 personal knowledge, too. Typically attorneys file  
5 motions during the holidays when attorneys don't  
6 have an opportunity. It may not be in the spirit of  
7 practicing law, but it does happen, particularly in  
8 state court as far as that is concerned.

9 THE COURT: Oh, not only in state court.

10 MR. ROBINSON: So that is our argument,  
11 Judge, and the terms on the issue on notice.

12 On the issue of fraud, Judge, we  
13 would have never expected Attorney Sinn to get up  
14 here and say, "Yes, I committed fraud." I mean, he  
15 would have more issues to deal with in terms of  
16 that. But we believe that the bankruptcy petition  
17 stands on its own as far as that is concerned.

18 There were six --

19 THE COURT: Do you have any theories  
20 other than fraud?

21 MR. ROBINSON: Do I have any theories  
22 other than fraud? No. No, Judge, no theories other  
23 than fraud that we can stand on.

24 THE COURT: Hmm?

25 MR. ROBINSON: No theories other than

1 fraud that we can stand on, none that I'm aware of.  
2 I mean, because -- if, in fact, it was a simple  
3 mistake, as the law says, if it was a simple  
4 mistake, it doesn't define -- the case law doesn't  
5 define what a mistake is, then that wouldn't  
6 necessarily be fraud.

7 But we would -- we would argue,  
8 Judge, that if he had left one lawsuit out or two  
9 lawsuits out of the schedule of creditors, then that  
10 would be a mistake. But to leave them all out, that  
11 leans more towards fraud, Judge.

12 THE COURT: You're referring to the fact  
13 that in the second case --

14 MR. ROBINSON: Yes, the second.

15 THE COURT: -- he filed -- he  
16 scheduled -- not scheduled, but he put in his  
17 statement of affairs six lawsuits?

18 MR. ROBINSON: Yes, six lawsuits.

19 THE COURT: None of which were scheduled.

20 MR. ROBINSON: None of them which were  
21 scheduled.

22 THE COURT: Did you -- in the first case  
23 he didn't schedule any of them. What he did was to  
24 schedule you as a lawyer.

25 MR. ROBINSON: Right. Exactly. You mean

1 in the 2004 bankruptcy petition.

2 THE COURT: Yes. So in the first case he  
3 did not schedule his pending cases, did he?

4 MR. ROBINSON: Schedule of creditors, I  
5 don't have --

6 THE COURT: I can't hear you.

7 MR. ROBINSON: I don't have the 2004 with  
8 me, Judge, but...

9 THE COURT: Well, he just scheduled your  
10 name.

11 MR. ROBINSON: Okay.

12 THE COURT: So you got notice of the  
13 first bankruptcy.

14 MR. ROBINSON: I can't recollect whether  
15 or not I did get --

16 THE COURT: Well, I'm not --

17 MR. ROBINSON: -- notice, Judge.

18 THE COURT: -- asking you to testify. At  
19 least --

20 MR. ROBINSON: Yeah, I --

21 THE COURT: -- you were put into a  
22 position where you could get such notice.

23 MR. ROBINSON: Right. Exactly.

24 THE COURT: Go ahead, counsel.

25 MR. ROBINSON: So, Judge, based on that



1 alone in terms of that, the fact that all pending  
2 lawsuits were not scheduled on the creditors, we  
3 think that leans more to intent. He intentionally  
4 did that.

5 THE COURT: Whose intent?

6 MR. ROBINSON: The intent of Bruce Smith  
7 and/or his attorneys at --

8 THE COURT: Do you attribute that attempt  
9 to Mr. Sinn, the lawyer?

10 MR. ROBINSON: Yes, Judge.

11 THE COURT: Why?

12 MR. ROBINSON: Well, because he  
13 purposefully did it, Judge. He had an opportunity  
14 as far as -- he had filed -- he even testified that  
15 he had filled out about 350 Chapter 7s, that, in  
16 fact, as he sat here today that he believed it  
17 should be scheduled, that he was in an office with  
18 25 attorneys, someone with great experience. So if  
19 he had any questions at that time, he could have  
20 asked someone. So it's not like the knowledge was  
21 not available to him, Judge. So we believe --

22 THE COURT: Well, he didn't claim that he  
23 didn't know what to do. Didn't he say he just made  
24 a mistake? And he -- and then didn't he also say  
25 that he showed the petition to the doctor --

1 MR. ROBINSON: Yes.

2 THE COURT: -- and asked him if it was  
3 accurate and complete, and the doctor -- if the  
4 doctor had said no, then he wouldn't have filed it?

5 MR. ROBINSON: He didn't say if the  
6 doctor had objected to certain things. He didn't  
7 say what the doctor would have objected to in terms  
8 of that. My inclination would be if the doctor  
9 said, well, no, those are not some of my creditors,  
10 then maybe he wouldn't have filed it in terms of  
11 that, not any pending lawsuit creditors.

12 THE COURT: Well, I thought he asked the  
13 -- he said he asked the doctor whether the schedules  
14 were accurate and complete.

15 MR. ROBINSON: Yes.

16 THE COURT: And if the doctor had said,  
17 no, they're not accurate or complete, he wouldn't  
18 have filed it.

19 MR. ROBINSON: That's true, Judge. That  
20 is absolutely true, not knowing what the  
21 underlying intent of --

22 THE COURT: Anything else, counsel?

23 MR. ROBINSON: That will be all, Judge.

24 THE COURT: Your argument, counsel.

25 MR. JESSER: As the court is well aware,

1 for generations in the law, fraud has to be alleged  
2 and proven with great factual specificity. To the  
3 contrary, Mr. Sinn's testimony and Dr. Smith's  
4 testimony that there was no fraudulent intention, no  
5 intention to deceive or to secrete is  
6 uncontroverted. The plaintiff has adduced no  
7 testimony whatsoever or other evidence to refute the  
8 clear and convincing -- and we don't back away from  
9 our burdens, the burdens that have shifted, the  
10 clear and convincing testimony of both defense  
11 witnesses that this was an honest mistake, if a  
12 mistake at all because Mr. Sinn testified he thought  
13 in good faith he was listing the specific lawsuits  
14 in the statement of financial affairs correctly.

15 It would have been another matter  
16 had there been no mention of these lawsuits. But  
17 the court sees in the exhibits that have been  
18 received into evidence clear explanations and  
19 details.

20 And even to be more semantical, I  
21 really haven't tried to justify in these last few  
22 months putting the lawsuits on the statement of  
23 financial affairs. But it's easy for the layperson,  
24 or even Steve Jesser who has been practicing 35  
25 years, to make a mistake when the statement of

1 financial affairs asks for the court, civil; where,  
2 Cook; status, pending. The doctor cannot, I would  
3 submit, Your Honor, be expected to know the  
4 intricacies of the Bankruptcy Code, as even I don't  
5 know, that they should have been alternatively  
6 scheduled in the creditor list.

7 Another area, Judge, is a difference  
8 in styles of counsel and myself. And I've said here  
9 in open court in past months, he's been a very  
10 worthy adversary, and we've been very civil to each  
11 other. But I have no secretary, but I have for  
12 years called my receptionist. And no matter where I  
13 am, since like it or not I go 365, I ask her what is  
14 in the mail today. This is a routine with us. She  
15 doesn't read me my junk mail. She reads me anything  
16 that she thinks might be of any importance. Now,  
17 with my faxes, they go into my e-mail. So I carry  
18 my faxes 365.

19 THE COURT: Do you have any --

20 MR. JESSER: I just don't close up the  
21 shop on December 22nd and come back to the shop on  
22 January 6th.

23 THE COURT: I understand. Counsel, let's  
24 assume somebody wanted to make sure that the state  
25 court lawyer didn't have enough practical time to

1 come in under the wire and by the deadline find out  
2 what bankruptcy is all about and get someone to file  
3 an adversary complaint. You can understand that one  
4 way of doing that is by not scheduling the creditor,  
5 right?

6 MR. JESSER: You said the state court  
7 lawyer?

8 THE COURT: Yeah. If somebody wanted to  
9 keep the state court lawyer from finding out about  
10 the case, the bankruptcy case, until it was too late  
11 to do something about it, one way would be not to  
12 schedule them so that it would deprive them of the  
13 ordinary period of notice from the clerk's office.

14 MR. JESSER: I'm with you on your  
15 hypothetical.

16 THE COURT: Well, in this case, why is it  
17 that the state court lawyer took so much time to  
18 notify this plaintiffs' lawyer about the pendency of  
19 the bankruptcy case?

20 MR. JESSER: I don't have --

21 THE COURT: We don't have any answer in  
22 the record, do we?

23 MR. JESSER: Well, I don't have a precise  
24 answer to the court's question, but three months'  
25 time when even thereafter -- let's go with your

1 hypothetical. Mr. Robinson returns to his office  
2 after New Year's, he's in court on January 6th, the  
3 case isn't discharged by --

4 THE COURT: His deadline is January 9th,  
5 right?

6 MR. JESSER: Well, I stood here two weeks  
7 ago, Judge, and Your Honor said, "Where's the  
8 notice?" I said, "I issued it last night." Your  
9 eyebrows went up. But as a solo practitioner,  
10 believe me that happens. Even though you and I  
11 were -- and you were the First Assistant State's  
12 Attorney. There are hundreds of attorneys in our  
13 office. When you're in solo practice, things get  
14 done -- and I think Mr. Robinson would admit, things  
15 get done at the last minute, as with his 364th-day  
16 filing of the adversary proceedings.

17 I hope I've been responsive, but I  
18 don't think three months ascribes any bad motives.  
19 He's taken on a huge burden by alleging fraud, so --  
20 he hasn't met this burden. There's been no -- not  
21 only no factual specificity of what fraud, he  
22 hasn't -- all he can stand up here and say is,  
23 "Well, it goes to." And maybe it's just a figure of  
24 speech. I found it rather odd in the plaintiffs'  
25 case that they referred to --

1 THE COURT: What figure of speech? What  
2 figure of speech?

3 MR. JESSER: Well, they kept referring to  
4 the attorney, the plaintiffs' attorney. The  
5 attorney is Mr. Robinson. It's Mr. Robinson's  
6 office, Mr. Robinson's fax machine, Mr. Robinson's  
7 secretary. And I think Mr. Robinson, although this  
8 may not be in the record, would admit to you he was  
9 in state court in the law division on or about  
10 January 6th.

11 If we go back to the statute, Your  
12 Honor, I don't want to lose the forest for the  
13 trees, the statute that counsel alleges was  
14 violated, 11 U.S.C. 727(a)(4) that I'm sure Your  
15 Honor could cite for us word for word, requires the  
16 proving of a false oath or account. I submit there  
17 has been no proof at this trial this afternoon of  
18 any false oath or account.

19 THE COURT: Sir, the oath that the  
20 schedules are true and complete is false, isn't it?  
21 It does not include a batch of creditors; isn't that  
22 right?

23 MR. JESSER: No, I don't concede that,  
24 Judge.

25 THE COURT: Why not?

1 MR. JESSER: And I'm not being semantical  
2 with Your Honor. It was in, arguably, the wrong  
3 place. The next schedule --

4 THE COURT: No, no, no. Each schedule  
5 has to be accurate. There's one thing called a  
6 statement of affairs which asks you to list  
7 litigation. There are reasons why you want to  
8 require litigation to be listed. There is another  
9 section, a different section, Schedule F, which  
10 requires the listing of unsecured claims, unsecured  
11 creditor claims. A creditor in Bankruptcyland is  
12 very broadly defined, and it certainly includes  
13 somebody that's brought a lawsuit. It doesn't have  
14 to be a liquidated claim. Creditors in -- that is  
15 claimants, plaintiffs in lawsuits, are creditors.  
16 So there's absolutely no doubt that it should have  
17 been listed in both places, just like the lawyer  
18 said tonight.

19 MR. JESSER: And I was going to say  
20 assuming arguendo --

21 THE COURT: Now, therefore, since it  
22 wasn't listed, why is that not a false pleading or a  
23 false affidavit?

24 MR. JESSER: But assuming arguendo that  
25 it is false for the sake of this very highly



1 scholarly dialogue that we're having, counsel has  
2 alleged it was fraud, it was fraudulently --

3 THE COURT: Yes. But as you --

4 MR. JESSER: -- intended.

5 THE COURT: -- properly recited the  
6 statute, fraud may consist of a false affidavit.  
7 I'm just asking you why isn't this a false  
8 affidavit, that is his affidavit at the end of the  
9 filing. The bankruptcy filing is where the debtor's  
10 affidavit comes, and he says it's complete and  
11 truthful, everything is complete and truthful.

12 MR. JESSER: Well, obviously, Dr. Smith  
13 is a layperson to the law. And this may not be very  
14 lawyerly for me to say, but as a nonbankruptcy  
15 practitioner, I find it rather disingenuous that  
16 Dr. Smith can so easily file a voluntary petition,  
17 and I know the court is engaging in a very  
18 scholarly, appellate-type dialogue, but then be  
19 expected to know the hyper-critical nuances of the  
20 Code and just where -- relying on his attorney, he's  
21 yet nevertheless supposed to know where exactly to  
22 schedule his creditors that he forthrightly names  
23 within the four corners of the petition.

24 THE COURT: Counsel, there's nothing  
25 hyper-technical and there's nothing complex about

1 this dialogue. In Bankruptcyland the schedules have  
2 to be filled out accurately so that the creditors  
3 can get notice.

4 MR. JESSER: And we're --

5 THE COURT: It's that Schedule F that is  
6 the basis for the clerk's notice to creditors  
7 telling them about the bankruptcy.

8 MR. JESSER: Okay.

9 THE COURT: Now, sometimes people  
10 actually send notice to their creditors. The lawyer  
11 will say, "You got to stop this lawsuit because I've  
12 just filed bankruptcy." But for some unexplained  
13 reason that wasn't done until the very -- a few  
14 days, only a few days were left in the deadline.

15 MR. JESSER: Well, Judge, we have these  
16 colloquial expressions sometimes put on the White  
17 Sox, "They don't win pretty, they win ugly." This  
18 wasn't a textbook case. But we seem to overlook the  
19 fact that Mr. Robinson knew in 2004 the doctor had  
20 sought bankruptcy relief in 2004. I'm not --

21 THE COURT: Yes, he did.

22 MR. JESSER: -- hanging my hat --

23 THE COURT: He did.

24 MR. JESSER: -- on that.

25 THE COURT: But, of course, that cuts --

1 that doesn't cut against the plaintiff because he  
2 knew the case was dismissed. All the creditors find  
3 out the case gets dismissed once it's dismissed. So  
4 it didn't mean anything. It doesn't mean that he  
5 should watch the bankruptcy court every day to find  
6 out if there was a new case. Surely you're not  
7 implying that. And, of course, it cuts the other  
8 way, that your client went through bankruptcy and  
9 knew to schedule Mr. Robinson, and he -- so that his  
10 clients would get notice in the first case but not  
11 in the second.

12 MR. JESSER: We used to have, I thought  
13 at least when I went to law school, a reasonable man  
14 standard. If Dr. Smith, although I did not examine  
15 him on that, has knowledge that Johnson & Bell has  
16 notified Mr. Robinson of his 2005 bankruptcy, what  
17 is this poor man further to do?

18 THE COURT: Say that again, please.

19 MR. JESSER: Under a reasonable man  
20 standard, if that still exists in the law as it did  
21 when we were in law school, if Dr. Smith knows that  
22 Johnson & Bell, a highly distinguished firm, is  
23 notifying on December 23 Mr. Robinson that he has  
24 gone and received -- he has gone into bankruptcy  
25 court the end of September, what more is Dr. Smith

1 expected to do?

2 THE COURT: Well, first of all, he's  
3 expected to sign accurate schedules. And as you  
4 read the statute, counsel, and if he has filed false  
5 schedules, even though his heart is pure, can he be  
6 guilty of fraud?

7 MR. JESSER: No.

8 THE COURT: If his heart is pure but his  
9 schedules are false, you're saying he cannot be  
10 guilty of fraud?

11 MR. JESSER: Well, I don't know about --  
12 that's a hard characterization for me to relate to.  
13 He committed no overt acts of fraud, and then we  
14 have the, if I recall correctly, fraudulent  
15 withholding. He withheld nothing from Mr. Sinn. To  
16 the contrary, he told Mr. Sinn about Mr. Robinson's  
17 lawsuits.

18 THE COURT: Well, the question we're  
19 going to have to decide, I guess, is whether -- I  
20 mean, you have put on evidence that said, in effect,  
21 his heart is pure, his lawyer made a mistake, and  
22 his lawyer's heart was pure. You haven't explained  
23 why the state court lawyer didn't notify anybody  
24 earlier. But you've implied that your client  
25 doesn't know what the duties are particularly, and

1 therefore his heart remains pure. So it is a  
2 classic type of case as to whether or not somebody  
3 that files a false affidavit in bankruptcy, whether  
4 he has a defense because his heart was pure.

5 MR. JESSER: Well, the court raised with  
6 me a moment ago, and I may have misinterpreted this,  
7 that doctor, or any other bankrupt, it could be me  
8 seeking bankruptcy court, has to almost recertify  
9 every section of the petition. I think if I were to  
10 recall doctor to the witness stand, he would testify  
11 that he was signing at the end. Whether it's manual  
12 or electronic, it doesn't matter. He stands behind  
13 what he signed. But he was trying to certify the  
14 accuracy and completeness of the whole petition. I  
15 submit, Your Honor, and I never use the word  
16 "technicality," but we're here discussing a highly  
17 procedural point.

18 THE COURT: Well, counsel, keep in mind  
19 that you are seeking the advantage of a very highly  
20 procedural point, which is the deadline for filing  
21 an objection to a discharge, a deadline which --

22 MR. JESSER: He came --

23 THE COURT: -- protects debtors.

24 MR. JESSER: He came in on time. He came  
25 in on the 364th day.

1           THE COURT: No. He has to come in with a  
2 heavy burden on the 364th day. If he came in by the  
3 first deadline, which is for filing of an adversary  
4 complaint objecting to discharge, he would only have  
5 to show that the type of case pending in state court  
6 is a type of case which, if he won, should be one in  
7 which dischargeability of that debt should be  
8 denied, a much lesser burden. I don't mean to  
9 pester you with a lot of questions --

10           MR. JESSER: No, I --

11           THE COURT: -- but these are the  
12 questions on which the case turns.

13           MR. JESSER: Well, obviously the court is  
14 not pestering me. There are very few courts that  
15 would be so intellectually -- that would engage me  
16 in such an intellectual discussion. It's for the  
17 very reason that no one could ever expect -- and I'm  
18 not flattering you, Judge, but no one could ever  
19 expect to walk into this courtroom and try to  
20 buffalo you or spin you into something that these  
21 two witnesses testified as forthrightly as they did.  
22 And there was no attempt to make excuses, but  
23 rather, "Yeah, we put it in a place that Your Honor  
24 doesn't approve of. We're sorry. We made a  
25 mistake." It didn't defraud anyone. Mr. Robinson

1 had ample time to rectify it. I get calls at 10:30  
2 at night if -- when I'm trying to go to bed. If I  
3 have to, I stay up until 2:00 in the morning to fix  
4 a problem so I can sleep easily. He had time.

5 THE COURT: Thank you, counsel.

6 Counsel, any rebuttal?

7 MR. ROBINSON: Just a small rebuttal.  
8 Judge, in terms -- like I said before, the court  
9 must look at the totality of the circumstances. The  
10 court must --

11 THE COURT: Slower, counsel, and use the  
12 mic.

13 MR. ROBINSON: Yes, Judge. I'm sorry.  
14 The court must look at the totality of the  
15 circumstances, Judge, and determine whether or not  
16 there was any alleged inadequacies, and I quote  
17 that, that did not prejudice the creditor. So there  
18 is no way the defendant can sit here today, Judge,  
19 and say that there were not any inadequacies that  
20 prejudiced Trina Tidwell and Sandra Sterling-Ahalla  
21 in terms of that. He filed his bankruptcy in  
22 September, didn't file a motion to transfer the  
23 bankruptcy until December the 23rd, almost three  
24 months later at -- during the period of time where  
25 not only attorneys, but a lot of individuals, Judge,

1 would likely be on vacation, noticing up a case for  
2 a hearing -- actually, the hearing was on January  
3 the 7th, Judge.

4 THE COURT: Let's assume that he had --  
5 that they had given you notice a few days after they  
6 filed the bankruptcy, actual notice by a letter from  
7 the lawyer saying, "I just filed a bankruptcy," but  
8 they had omitted scheduling your clients or you on  
9 Schedule F so the clerk never sent you notice --

10 MR. ROBINSON: Right, Judge.

11 THE COURT: -- but you got notice a  
12 couple of days after the bankruptcy was filed. The  
13 oath would still have been false, right?

14 MR. ROBINSON: Yes, the oath would still  
15 have been false, Judge. Yes.

16 THE COURT: So could you rely on that  
17 falsity if you had had three months' notice, actual  
18 notice?

19 MR. ROBINSON: Not in the terms of  
20 notice, Judge. No, I don't think I would be able to  
21 rely on that falsity.

22 THE COURT: Why not?

23 MR. ROBINSON: Because I think at that  
24 particular time --

25 THE COURT: Isn't it your argument that



1 the oath was false and, therefore, there was fraud?

2 MR. ROBINSON: Oh, in terms of fraud,  
3 yes. I thought you said in terms of notice.

4 THE COURT: So could you still make that  
5 argument if you had actually gotten notice a couple  
6 days after the bankruptcy was filed?

7 MR. ROBINSON: Yes. The fraud argument  
8 is --

9 THE COURT: Not from the clerk, not based  
10 on the false Schedule F, but just based on a  
11 lawyerly letter from the debtor's lawyer?

12 MR. ROBINSON: On a basis of fraud, I  
13 would say, yes, Judge, that argument could be made.

14 THE COURT: You could still argue fraud  
15 if you got notice and disregarded the deadline?

16 MR. ROBINSON: Yes, Judge, I think it  
17 would be argument on fraud. The only exception  
18 would be if, in fact, it was -- there was -- had  
19 bankruptcy experience or had dealt with the  
20 situation before as far as that is concerned.

21 THE COURT: So we'd have to make an ad  
22 hominem, that is an analysis of the lawyer as to  
23 whether the lawyer had experience?

24 MR. ROBINSON: Well, Judge, I mean, it's  
25 kind of ambiguous, but it does say the totality of

1 the circumstances. And I would envision that cases  
2 have been decided based upon that. In the Walker  
3 case it says two nonlawyers, so it obviously is  
4 looking at the individuals who actually received  
5 notice.

6 That would be all, Judge.

7 THE COURT: Anything else?

8 MR. ROBINSON: That's all.

9 THE COURT: Thank you, folks. I'll rule  
10 by mail. Thank you and good night.

11 (Which were all the proceedings  
12 had in the above-entitled cause,  
13 September 17, 2007.)

14 I, GARY SCHNEIDER, CSR, RPR, DO HEREBY CERTIFY THAT  
15 THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF  
16 PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE.  
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